

# PROCESSING FOIA REQUESTS FOR DOCUMENTS CONTAINING CLASSIFIED INFORMATION USING EXEMPTION (B)(1)

# Documents Containing Classified Information

- The DoD will withhold information that is currently and properly classified when it is requested under the FOIA.
- The DoD will release information that is no longer currently and classified when it is requested under the FOIA unless it warrants protection under another exemption.

# Documents Containing Classified Information

- Who asks for it under FOIA?
  - Researchers
  - Media
  - Special Interest Groups
  - Interested Individuals
- Why do “they” want it?
- What do “they” do with it?

# ***FREEDOM OF INFORMATION ACT***

## ***Exemptions***

**(b) (1) APPLIES TO INFORMATION WHICH IS CURRENTLY  
AND PROPERLY CLASSIFIED IN THE  
INTEREST OF NATIONAL DEFENSE OR  
FOREIGN POLICY, AS SPECIFICALLY  
AUTHORIZED UNDER THE CRITERIA ESTABLISHED  
BY EXECUTIVE ORDER AND  
IMPLEMENTED BY REGULATIONS, SUCH AS DoD  
5200.1-R.**

- **MAY CLASSIFY AFTER FOIA REQUEST RECEIVED**
- **GLOMAR RESPONSE**
- **COMPILATION / MOSAIC**



# FOIA EXEMPTIONS

- Nine Exemptions-Must apply to deny information under the FOIA
- (b)(1) Classified Information
- (b)(2) through (b)(9) – Unclassified Information
  - Some (b)(3) statutes concern classified information

# Requests for Documents Containing Classified Information

- Accomplish normal (although extremely important) administrative up front processing.
- If applicable, contact requester to discuss scope of request.
  - Requesters be as specific as possible.
- Task out accordingly within your staff.

# Requests for Documents Containing Classified Information

- Search For Records.
  - People searching for records must know where their records are stored.
  - Age of potentially responsive records may be a factor in where records are stored.
    - WNRC
    - NARA
- Must identify responsive information

# Requests for Documents Containing Classified Information

- Search For Records.
  - Designation of fee status and requester willingness to pay may affect time spent on search.
  - Staff must keep track of time spent on search.
- If no responsive documents are found:
  - Likely appeal.
  - The component that searched must be prepared to explain methods of search.



# Requests for Documents Containing Classified Information

- Review of classified documents responsive to FOIA requests.
- Review page by page within the document and identify information that is currently and properly classified.
- If the determination is that everything within the document is classified, the cognizant component must be prepared to say why.

**5. (U) C3 for North American Air Defense**

**a. ~~(S)~~**

**b. (U) Capability**

**(1) ~~(S)~~**

**(2) ~~(S)~~**

**(3) ~~(S)~~**

**c. (U) Rationale**

**(1) ~~(S)~~**

## UNCLASSIFIED

Proprietary Rights. According to the NAVAIR program manager, the reason for not breaking out [redacted]s for direct purchase pre [redacted] special tooling for the [redacted] gearbox.

competitively on an Air Force contract (F41688-82-D-0010) for [redacted] gearboxes in the mid-1982. Our review of available documentation indicated that the special tooling in question had been paid for by the Government [redacted] no objection to its use on a nonin [redacted] [redacted] [redacted]. We also found that contract -0013 contains a special tooling clause which appears to us to give the Government full rights to usage (Defense Acquisition Regulation 7-104.25). Even if a legal claim for proprietary rights could be established by [redacted] For example, the Navy's Aviation Supply Office in Philadelphia, Pennsylvania, purchased the identical speed decreaser gearbox directly from General Electric. General Electric's price to Navy's Aviation Supply Office under a basic ordering agreement (F34601-79-G-0213-GBMT) for 46 gearboxes ordered in August 1981 was \$79,968 each, for a total of \$3,678,528. This unit price is substantially lower than the \$124,880 price negotiated by NAVAIR with Kaman in June 1982 on contract -0113 (\$4,495,698 divided by 36). The following section shows potential savings by breaking out these items.

Potential Savings by Breakout. DCAS files showed that DCAA, DCAS, and the Navy Procurement Contracting Officer (PCO) recommended the gearboxes for breakout. Also, DCAS officials have stated that the overhead and profit charged by General Electric and Kaman were excessive and the PCO was so informed. The [redacted] decision on price and whether to break out the buy, however [redacted] January 11, 1983 memorandum the NAVAIR program [redacted] although breakout could save costs, the contractor furnished equipment method was being used [redacted] problems and the time lag since it last manufactured this part. We were told that [redacted] however, no reason [redacted] was given by the program manager for not buying the [redacted].

UNCLASSIFIED

# ***COMPILATION / MOSAIC***

***PROBLEM:*** PROTECTION OF RECORDS CONTAINING UNCLASSIFIED INFORMATION, THE UNAUTHORIZED RELEASE OF WHICH REASONABLY COULD BE EXPECTED TO CAUSE DAMAGE TO THE NATIONAL SECURITY.

**CLASSIFICATION BASED ON COMPILATION THEORY**  
**APPLIES WHEN A GOVERNMENT AGENCY COMPILES SELECTED UNCLASSIFIED INFORMATION INTO A SINGLE RECORD OR PORTION THEREOF THAT IN ITS TOTALITY, IS CLASSIFIED.**

***EXAMPLE:*** A LISTING OF TITLES BY DATE OR CONTROL NUMBER OF ALL INTELLIGENCE STUDIES DONE FOR A PARTICULAR PERIOD OF TIME.

**CLASSIFICATION BASED ON MOSAIC THEORY**  
**APPLIES WHEN A GOVERNMENT AGENCY DETERMINES THAT RELEASE OF ALL UNCLASSIFIED RECORDS ON A PARTICULAR SUBJECT WOULD ENABLE A KNOWLEDGEABLE PERSON TO ANALYZE THE MATERIAL AND DETERMINE INFORMATION WHICH IS CLASSIFIED.**

***EXAMPLE:*** RELEASE OF ALL RECORDS CONCERNING ARMS



# ***GLOMAR RESPONSE***

## **EXAMPLE**

**THE OFFICE OF THE DEPUTY UNDER SECRETARY OF DEFENSE FOR POLICY HAS DETERMINED THAT THE FACT OF THE EXISTANCE OR NONEXISTENCE OF RECORDS WHICH WOULD REVEAL A CONNECTION OR INTEREST IN THE MATTERS RELATING TO THOSE SET FORTH IN YOUR REQUEST IS CLASSIFIED IN ACCORDANCE WITH EXECUTIVE ORDER 12958. THEREFORE, PURSUANT TO 5 USC 552(b)(1), MR. JOHN DOE, ASSISTANT DEPUTY UNDER SECRETARY OF DEFENSE FOR POLICY HAS DENIED YOUR REQUEST. BY THIS STATEMENT, THE DEPARTMENT NEITHER CONFIRMS NOR DENIES**

# EO 12,958 AS AMENDED

- NOW REFERRED TO EO 12,958 AS AMENDED
- EXISTING ORDER AMENDED RATHER THAN NEW EO
- PREVIOUS PROVISION (1.2(b)) FAVORING DECLASSIFICATION WHEN 'SIGNIFICANT DOUBT ABOUT NEED TO CLASSIFY' REMOVED
- FEW CHANGES AFFECTING USE OF EXEMPTION 1

# EO 12,958 AS AMENDED

- NEW SECTION FOR CLASSIFICATION CATEGORIES – NOW 1.4 (a-h)
- ADDED “TRANSNATIONAL TERRORISM” LANGUAGE TO 1.4 (e), 1.4(g)
- ADDED “INFRASTRUCTURES” TO 1.4 (g)
- ADDED NEW CLASSIFICATION CATEGORY 1.4(h) – WEAPONS OF MASS DESTRUCTION

# EO 12,958 AS AMENDED

## NEW PROVISIONS

- RECLASSIFICATION OF DECLASSIFIED INFORMATION SECTION 1.7(c)
- PRESUMPTION OF DAMAGE TO THE NATIONAL SECURITY FOR UNAUTHORIZED DISCLOSURE OF “FOREIGN GOVERNMENT INFORMATION” SECTION 1.1(c)



# ***FREEDOM OF INFORMATION ACT***

## ***Exemptions***

**EXTRACT FROM EXECUTIVE ORDER 12958  
AS AMENDED**

### **SEC 1.4. CLASSIFICATION CATEGORIES.**

**INFORMATION MAY NOT BE CONSIDERED  
FOR CLASSIFICATION UNLESS IT CONCERNS:**

- (a) MILITARY PLANS, WEAPONS SYSTEMS, OR  
OPERATIONS;**
- (b) FOREIGN GOVERNMENT INFORMATION;**
- (c) INTELLIGENCE ACTIVITIES (INCLUDING  
SPECIAL ACTIVITIES), INTELLIGENCE SOURCES  
OR METHODS, OR CRYPTOLOGY;**

# ***FREEDOM OF INFORMATION ACT***

## ***Exemptions (continued)***

- (d) FOREIGN RELATIONS OR FOREIGN ACTIVITIES OF THE UNITED STATES, INCLUDING CONFIDENTIAL SOURCES;**
- (e) SCIENTIFIC TECHNOLOGICAL, OR ECONOMIC MATTERS RELATING TO THE NATIONAL SECURITY, *WHICH INCLUDES DEFENSE AGAINST TRANSNATIONAL TERRORISM***
- (f) UNITED STATES GOVERNMENT PROGRAMS FOR SAFEGUARDING NUCLEAR MATERIALS OR FACILITIES;**

# EO 12,958 AS AMENDED

- (g) VULNERABILITIES OR CAPABILITIES OF SYSTEMS, INSTALLATIONS, INFRASTRUCTURES, PROJECTS, OR PLANS RELATING TO THE NATIONAL SECURITY, *WHICH INCLUDES DEFENSE AGAINST TRANSNATIONAL TERRORISM; OR***
- (h) *WEAPONS OF MASS DESTRUCTION***